

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

DARRION LARRY ALEXANDER,

Plaintiff,

No. CIV S-03-0288 DFL GGH P

vs.

EDWARD ALAMEIDA, JR., et al.,

Defendants.

ORDER

On April 8, 2005, the court recommended that defendants' summary judgment motion filed February 22, 2005, be granted. In the findings and recommendations, the court found that plaintiff's failure to file an opposition would be deemed a waiver of opposition.

On May 2, 2005, plaintiff filed objections to the findings and recommendations. Plaintiff states that he did not file an opposition to defendants' motion because it was not timely filed. Plaintiff observes that on January 10, 2005, the court granted defendants an extension to February 21, 2005, to file the summary judgment motion.

February 21, 2005, was a court holiday. For that reason, defendants' motion was due the next day, i.e. on February 22, 2005. Fed. R. Civ. P. 6(a). Because of plaintiff's mistaken belief regarding the timeliness of defendants' motion, the findings and recommendations are vacated and plaintiff is granted an opportunity to file an opposition.

Accordingly, IT IS HEREBY ORDERED that:

1. The April 8, 2005, findings and recommendations are vacated;

2. Plaintiff's opposition to defendants' motion is due within thirty days of the date of this order; defendants may file a reply within ten days thereafter.

3. The pretrial conference set for May 6, 2005 and the jury trial set for July 12, 2005, are hereby VACATED pending resolution of defendants' motion for summary judgment.

DATED: 5/11/05

/s/ Gregory G. Hollows

GREGORY G. HOLLOWS
UNITED STATES MAGISTRATE JUDGE

ggh:kj
alex288.vac